

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>SYLVIA SAYSOFF</b>	)	
Claimant	)	
VS.	)	
	)	
<b>J.C. PENNEY COMPANY</b>	)	Docket No. 137,980
Respondent	)	138,766
AND	)	
	)	
<b>LIBERTY MUTUAL INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appeals from a Preliminary Decision entered by Administrative Law Judge Robert H. Foerschler on November 30, 1995, at which time the Administrative Law Judge denied claimant's request for future medical treatment to her right wrist and hand finding no medical evidence in the record recommending additional treatment to claimant's wrist.

**ISSUES**

- (1) Whether the Administrative Law Judge exceeded his jurisdiction in denying claimant's request for additional medical treatment from the Award entered on May 11, 1990.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeals Board finds as follows:

In order to understand this case a brief explanation of the facts is necessary. Claimant has filed three (3) separate compensation claims against respondent. In Docket Number 137,980 claimant alleged a series of injuries through August 1, 1988 to her right upper extremity. She was diagnosed with carpal tunnel syndrome and surgery was performed. A running award was entered into between the parties on May 11, 1990 with future medical being granted upon application to and approval by the Director.

In Docket Number 138,766 with the date of injury of January 10, 1989, claimant alleged repetitive use injuries to her right upper extremities including the wrist and forearm. This matter is still pending.

In Docket Number 140,490 claimant alleged a date of injury of March 18, 1989 to her upper back, neck, both arms, both shoulders and both hands. An award was entered on May 18, 1992 with claimant being granted future medical upon "findings of necessity". This matter was settled as to all issues including future medical on April 12, 1995.

Claimant filed a Form E-3, Application for Preliminary Hearing, in Docket Numbers 137,980 and 138,766 on September 14, 1995, requesting a preliminary hearing for the purpose of obtaining additional medical treatment to her right wrist and hand. Multiple medical reports were placed into evidence dealing with all of claimant's physical problems including her back, neck, arms, shoulders, hands and wrists. Specific medical recommendations for treatment to claimant's wrist and upper extremity were not found in the medical reports. It appears as though that claimant has not been to a doctor since approximately 1991. Judge Foerschler, in his Decision denying additional medical treatment, stated, "The Division cannot order doctors 'to fix her wrist' unless there is some recommended medical procedure for this purpose." The Judge's denial of medical treatment appears to stem from a finding that no medical procedure has been recommended by any doctor which can resolve claimant's ongoing symptomatology.

K.S.A. 44-534a restricts the review by the Appeals Board to situations where it is disputed whether: (1) the employee suffered an accidental injury, (2) the injury arose out of and in the course of the employee's employment, (3) whether notice was given or claim timely made, or (4) whether certain defenses apply. The request by claimant for additional medical care does not come under the language of K.S.A. 44-534a and, as such, the Appeals Board would not have jurisdiction to review this claim under such statute. The Appeals Board does have jurisdiction to review an administrative law judge's preliminary hearing order under K.S.A. 44-551, if it is alleged that the administrative law judge has exceeded his or her jurisdiction in granting or denying benefits. K.S.A. 44-534a specifically grants administrative law judges the right to decide issues dealing with medical treatment and temporary total disability compensation at preliminary hearings. As this hearing began with the filing of an E-3 by the claimant on September 14, 1995, this comes under the heading of a preliminary hearing and, in reviewing K.S.A. 44-534a, it is clear the Administrative Law Judge has the jurisdiction to decide the issues raised. As the Administrative Law Judge has not exceeded his jurisdiction in deciding the issue of medical

treatment, the Appeals Board does not have the jurisdiction to decide this issue at this time.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeal of the claimant from the preliminary hearing Decision of November 3, 1995, should be, and is hereby, dismissed. The Decision of Administrative Law Judge Robert H. Foerschler remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Mark E. Kolich, Kansas City, Kansas  
Stephanie Warmund, Overland Park, Kansas  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director